TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 63

NELSON SIBRON, APPELLANT

vs.

NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED OCTOBER 6, 1966
PROBABLE JURISDICTION NOTED MARCH 13, 1967

Supreme Court of the United States

OCTOBER TERM, 1967

No. 63

NELSON SIBRON, APPELLANT

vs.

NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

INDEX

[fol. 1] Affidavit—General

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1A, COUNTY OF KINGS

STATE OF NEW YORK,)
) ss.:
COUNTY OF KINGS)

COMPLAINT—Filed March 10, 1965

Ptl Martin—90 Pct of No ——, County of kings, City of New York, being duly sworn, says, that on 3/9/65, at about 11.15 P.M. at in front of 742 Bway in the County of kings, City and State of New York, the defendant Nelson Sibron did violate sec1751 of the Penal Law in that he did feloniously and unlawfully possess a quantity of a narcotic drug to wit: Heroin as will appear from the following:

The defendnt was observed at different times at the above location talking to known narcotic addicts, each of whom would engage the defendant in a short conversation and then depart. As the officer approached the defendant, the latter being in the direction of the officer and seeing him, hedid put his hand in his left jacket pocket and pulled out a tinfoil envelope and didattempt to throw same to the ground. The officer never losing sight of the said envelope seized it from the deft's left hand, examined it and found it to contain ten glascine envelopes with a white substance alleged to be Heroin. When placed under arrest and questioned the defendant stated that it was his, that he was a user of narcotics and "it was the stuff."

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me 3/10/65.

/s/ [Illegible]
Judge

/s/ Ptl. Anthony Martin
Pending Leaves (see R & P 14/26.0)
Vacation None.
Other Leave None

Adjourned to ... County of ... Night Court

Paroled, the defendant was advised pursuant to Sec. 1694b of the Penal Law.

Date ... JOHN M. MURTAGH

Adjourned to 4/23/65 Bail $ SB 2B

Paroled, the defendant was advised pursuant to Sec. 1694b of the Penal Law.

3/31/65 (KERN) Judge.

Adjourned to ... Bail $ ...

Paroled, the defendant was advised pursuant to Sec. 1694b of the Penal Law.

Date ... Judge.

ABRAHAM GOETZ COURT REPORTER

RYAN- MALTER- ROSENBERG J.

DEFENDANT ARRAIGNED ON INFORMATION UNDER SECTION 813-a P.L. & DEFENDANT ADMITS PRIOR CONVICTION.

SENTENCE N.T.C. Remit 6 mos Workhouse

APR 23 1965

JOHN L. RYAN

A2719

CRIMINAL COURT
OF THE CITY OF NEW YORK
PART 1A, County of ...

THE PEOPLE OF THE STATE OF NEW YORK

1. Nelson vs. Gibson
Address

2. 2B COMMITTED
Address

Address

Defendant arraigned 3/20, 1965

Hon. ... Judge.

Matzen
Officer and Shield No.
90
Assignment.

The defendant on being brought before me was informed of the within charge of violation of

REDUCED TO 3305 PHL

of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings, of his right to an adjournment to procure counsel, of his right to a trial in a part of the Court held by a panel of three judges, and if such trial is ordered, of his right to an examination of the charge.

MAR 31 1965

JOHN M. MURTAGH

Defendant pleads GUILTY

Date ..., 19...

Judge.

Tried and found GUILTY

Date ..., 19...

Judge.

Complaint prepared by ...

Witnesses—name and address

RYAN- MALTER- ROSENBERG J.
Def Warned 335 B.

ABRAHAM GOETZ COURT REPORTER

WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA OF GUILTY

APR 23 1965

JOHN L. RYAN

FINE PAID

Date ... Amount $...

Collected by ...

Fines Book Entry by ...

Docket Book Entry by ...

CASH BAIL POSTED. Dir of Fin. Cert. #...

ORDER THAW THE WITHIN CASH BAIL BE REFUNDED

Date ... Judge.

Refund Number ... Court Clerk

3/31/65 ... Clerk

Date

Examination waived ... 19...

Examination begun ... 19...

Examination closed ... 19...

ORDER OF DISMISSAL

There being no sufficient cause to believe the within named defendant

guilty of the offense within mentioned, I order said defendant to be discharged.

Date ... Judge.

ORDER TO ANSWER

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

guilty thereof, I order that said defendant be held to answer in Part ... County of ... on ... 19... and be admitted to bail in the sum of $...

and be committed to the Commissioner of Correction of the City of New York until the said defendant shall give such bail.

Adjourned to 3/31 Bail $ 1000

at Part ..... County of .....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

MAR 10 1965 .....
Date *Judge.*

Adjourned to ..... Bail $ .....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date *Judge.*

Adjourned to ..... Bail $ .....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date *Judge.*

H Schwartz

DOCKET No. A 2299 (61)

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part 1 , County of Kings

THE PEOPLE OF THE STATE OF NEW YORK

vs.

Nelson Sibron - 27

1. 1678 St Johns Place Bklyn
Address

2. .....
Address

3. .....
Address

4. .....
Address

5. .....
Address

6. .....
Address

Defendant arraigned 3/10/65, 19....

Hon. ..... *Judge*

Ptl Martin - 90 Pct
Officer and Shield No.

Assignment

The defendant on being brought before me was informed of the within charge of

1751 PL

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings, of his right to an examination of the charge and of his right to an adjournment to procure counsel or to communicate with anyone.

MAR 10 1965

WITNESSES—NAME AND ADDRESS

FRANK COURTNEY CONSENT OF A... DIS ATTORNEY REDUCED TO...
COURT REPORTER

3305 PHL

DATE JOHN M. MURTAGH JUDGE

LEGAL AID REQUESTED AND ASSIGNED

DATE MAR 10 1965

DEP. BY MR. .....

Complaint prepared by .....

Exam. Waived ....., 19....

Exam. Begun ....., 19....

Exam. Closed ....., 19....

ORDER OF DISMISSAL

There being no sufficient cause to believe the within named defendant

.....

.....

.....

guilty of the offense within mentioned, I order said defendant to be discharged.

Date *Judge.*

ORDER TO ANSWER

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant ,

.....

.....

.....

guilty thereof, I order that said defendant be held to answer, and be admitted to bail in the sum of $.....

.....

.....

.....

and be committed to the Commissioner of Correction of the City of New York until the said defendant shall give such bail.

Date *Judge.*

[fol. 4] IN THE CRIMINAL COURT
OF THE CITY OF NEW YORK
PART 1A, COUNTY OF KINGS

Docket #: 2299

Charge: 1751 P.L.

IN THE MATTER OF

THE PEOPLE OF THE STATE OF NEW YORK

-against-

NELSON SIBRON, DEFENDANT

MINUTES OF WEDNESDAY, MARCH 31, 1965

BEFORE:

HON. JOHN M. MURTAGH, Criminal Court Judge

APPEARANCES:

For the People:

S. RAMETTA, ESQ.,
Assistant District Attorney

For the Defendant:

ROBERT REARDAN, ESQ.,
Legal Aid Society

COURT OFFICER: IRVING ZIGLER

FRANCIS M. COURTNEY
Official Court Reporter

[fol. 5] COURT OFFICER: Number 61. 2299; Nelson Sibron; Martin, 90 Precinct.; charged with 1751 of the Penal Law on the complaint of the Officer. Legal Aid.

MR. REARDAN: Your Honor, I believe the Laboratory report will indicate a misdemeanor charge. I will move to reduce the charge to a misdemeanor.

MR. RAMETTA: The defendant will plead guilty?
MR. REARDAN: No.
MR. RAMETTA: Did you see the sale?
PATROLMAN MARTIN: No.
MR. RAMETTA: And, have you got enough here for a Felony?
PATROLMAN MARTIN: No.
MR. RAMETTA: Your Honor reduce this to 3305 of the Public Health Law please?
THE COURT: Motion granted.
MR. RAMETTA: Send it upstairs for a motion to suppress, please.
THE COURT: 1C for Hearing.

* * * *

"The above is a correct transcript of the minutes taken in this case."

/s/ Francis M. Courtney
Official Court Reporter

[fol. 6] IN THE CRIMINAL COURT
OF THE CITY OF NEW YORK
PART 1C, BOROUGH OF BROOKLYN

Docket No. A 2299

Charge: Sec. 3305, P. H. L.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF

-against-

NELSON SIBRON, DEFENDANT

Brooklyn, N. Y.

MINUTES OF MARCH 31, 1965 ON MOTION TO SUPPRESS

BEFORE:

HON. MICHAEL KERN, Criminal Court Judge

APPEARANCES:

LOUIS JOSEPH, ESQ.
Assistant District Attorney
For the People

JOSEPH KAPLAN, ESQ.
%Legal Aid Society
360 Adams Street
Brooklyn, New York
For the Defendant

COURT OFFICER: HAROLD STEWART

ABRAHAM GOETZ, CSR
Official Court Reporter

[fol. 7] THE COURT OFFICER: The next matter is Nelson Sibron. How about that one?

MR. KAPLAN: This is a motion to suppress, I think.

MR. JOSEPH: That was reduced downstairs.

THE COURT OFFICER: Are you ready on Nelson Sibron?

MR. JOSEPH: It is a motion to suppress.

THE COURT OFFICER: Are you prepared on anything now, Mr. Kaplan?

MR. KAPLAN: No.

THE COURT OFFICER: That's your answer.

(Case set aside, recalled in the P. M. session of the Court.)

P. M. SESSION

THE COURT OFFICER: Docket A 2299. Nelson Sibron, 3305 of the Public Health Law. Defendant is represented by Legal Aid. Motion to suppress; is that correct, Legal Aid?

MR. KAPLAN: Yes.

THE COURT: All right. Both sides ready on this motion?

MR. JOSEPH? People are ready. Go ahead.

THE COURT: Call your first witness, Mr. Kaplan.

[fol. 8] MR. KAPLAN: May I ask to have the officer excluded in this case?

THE COURT: All right. The officer is excluded.

(The officer referred to left the hearing room at this point.)

NELSON SIBRON, called as a witness on his own behalf, having first been duly sworn by the Court, was examined and testified as follows:

THE COURT: State your name, address and occupation.

THE WITNESS: Nelson Sibron; 1678 St. John's Place, Brooklyn; casting.

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Sibron, you are a drug addict?

A Yes.

Q And you have a record, a police record?

A Yes.

MR. KAPLAN: May I have the yellow sheet?

Q (after being handed record referred to), You were convicted of 3305 in 1955; am I correct?

A Yes.

Q And you were convicted of burglary in 1956; am I correct?

A Yes.

[fol. 9] Q And you were convicted of 3305 in 1957; am I correct?

A Yes.

MR. KAPLAN: Etc. Etc. Your Honor, to save time, I would like to offer the yellow sheet which is attached to the District Attorney's papers in this case.

THE COURT: Received. Deemed marked, Exhibit "A."

(The yellow sheet referred to was do duly deemed marked.)

Q Mr. Sibron, you were present in front of 742 Broadway, Kings County, March 9, 1965?

A I was in a restaurant.

Q You remember being arrested that day?

A Yes.

Q Can you tell the Court everything that took place up to the time of the arrest? Tell the Court.

A I was in a restaurant. I was having a coffee and a piece of pie. The officer came and called me out of the restaurant and I went to him. So he asked me if I knew what he was looking for. I said, "No," so he searched me.

THE COURT: Did you know the officer?

THE WITNESS: No, sir.

THE COURT: Did you ever see him before?

THE WITNESS: I don't remember.

THE COURT: You don't remember whether you ever saw him before?

[fol. 10] Q Was he in uniform?

THE WITNESS: I don't live in that neighborhood.

THE COURT: Was he in uniform?

THE WITNESS: Yes. He called me out of the restaurant and I went to him. I thought he wanted to ask

me something. He put his hand in my pocket and he took out ten bags of heroin which I possessed at the time.

THE COURT: Did he show you a search warrant?

THE WITNESS: No, sir.

THE COURT: A warrant of arrest?

THE WITNESS: No, sir.

THE COURT: Were you with anybody at the time?

THE WITNESS: No, I was by myself there.

THE COURT: What pocket did he put his hand into?

THE WITNESS: My left pocket.

THE COURT: That jacket you are wearing now?

THE WITNESS: Yes.

THE COURT: He put his hand in the left side pocket?

THE WITNESS: Yes.

THE COURT: Did he take something out? Yes or no?

[fol. 11] THE WITNESS: Yes.

Q Did you throw anything to the ground?

A No, sir.

Q Are you familiar with Mapp versus Ohio, search and seizure?

MR. JOSEPH: I object to it.

THE COURT: Objection overruled.

MR. JOSEPH: Lots of lawyers don't know what it is.

THE COURT: Objection overruled. Are you familiar with the case?

MR. JOSEPH: Maybe the answer might be interesting.

THE COURT: That's exactly why I overruled the objection. Are you familiar with the case of Mapp against Ohio?

THE WITNESS: No, sir.

THE COURT: Do you know Mrs. Mapp or Miss Mapp?

MR. JOSEPH: From Ohio?

THE WITNESS: No.

THE COURT: All right. Go ahead, Mr. Kaplan.

Q Do you know whether there was any law about officers searching people in the street?

MR. JOSEPH: I object to that.

THE COURT: Objection overruled.

Q Do you know whether it is proper or not?

[fol. 12] A I know it is not proper.

THE COURT: You know what?

THE WITNESS: I know it is not proper.

THE COURT: For the benefit of the Court, Mr. Kaplan, do you mind?

MR. KAPLAN: No.

THE COURT: You answered your lawyer's question by saying you know it is not proper; is that what you said?

THE WITNESS: Yes.

THE COURT: Now what is not proper, Mr. Witness?

THE WITNESS: I don't know much about law, Judge.

THE COURT: But what is not proper? What is it you are talking about now?

THE WITNESS: I can't explain it. Just I heard it is not proper for an officer to search you, unless a person is committing a crime.

THE COURT: Look, Mr. Witness, don't be nervous. Sit back. I want to know something and you are the man to tell me. You say you know something about searching you is not proper. You mean it is not right? You mean it is not lawful? Is that what you want to tell me?

[fol. 13] THE WITNESS: Yes.

THE COURT: You understand the police officer has no right to search you?

THE WITNESS: Yes.

THE COURT: The police officer cannot search you; is that your understanding?

THE WITNESS: Yes.

THE COURT: That's his understanding, Mr. Kaplan.

MR. KAPLAN: No further questions.

THE COURT: Shades of Blackstone!

CROSS-EXAMINATION

BY MR. JOSEPH:

Q Do you know that from your past experience as a narcotic?

A Yes.

Q You told your counsel you were convicted how many times?

MR. KAPLAN: I object to this line. The best evidence is the sheet in evidence. The defendant admitted to that.

THE COURT: The objection is sustained.

Q You admitted to two or three?

A Yes, sir.

Q Isn't it a fact that you were convicted eight times?

MR. KAPLAN: Objection was sustained, I thought, Your Honor.

[fol. 14] THE COURT: The objection is sustained. I have the record; I have it before me.

MR. JOSEPH: Cross-examination, Judge.

THE COURT: On the credibility, was he right in saying two or three times? I will permit Mr. Joseph to go that far. Were you convicted two or three times or eight times?

MR. KAPLAN: I will object. He didn't testify that way. I was the one that read it off.

MR. JOSEPH: You stopped at two.

MR. KAPLAN: I stopped at two. Then I said, "Etc. Etc."

THE COURT: Objection sustained.

MR. KAPLAN: Thank you.

Q Now how long were you in this restaurant before the officer came in?

A About ten minutes.

Q Three minutes?

A Ten minutes.

Q And that's where you say the officer came over and searched you?

A Yes.

Q Now how long were you on the outside of the restaurant before you went in?

A I wasn't on the outside.

[fol. 15] How many people did you talk to?

A About two people.

Q About two people? What were you talking about?

A Nothing important.

Q Were you talking about narcotics?
A Yes.
MR. KAPLAN: I will object. It is irrelevant.
THE COURT: Objection overruled.
Q Weren't you? What were you talking about to these unknown people?
A They were asking me about some people which I don't remember.
Q Were you talking about narcotics?
A People.
Q Narcotic people?
A Yes.
Q These were narcotics you were talking to?
A Yes.
MR. JOSEPH: That's all.
MR. KAPLAN: Object, Your Honor.
THE COURT: Overruled.
MR. JOSEPH: I am satisfied. He answered my question.
MR. JOSEPH: Your witness.
MR. KAPLAN: I am finished with him.
[fol. 16] THE COURT: Next witness. Step down, sir.
MR. KAPLAN: The petitioner rests in this case.
THE COURT: Are you calling a witness? The police officer?
MR. JOSEPH: I think it is the duty on the part of the Legal Aid to call the police officer. He is making the motion. He can't keep any facts from the Court.
THE COURT: I think you ought to call the police officer. I am not so sure that Malinsky stands for the proposition that in every case the burden is on the people. People against Malinsky, I think, has been variously misinterpreted and I am not quite ready to say that the Court of Appeals meant in People against Malinsky that in every one of these cases, including applications to controvert a warrant or applications directed to the sufficiency or adequacy of the affidavit on which the warrant is based or probable cause, that in all those cases that the burden is on the people.
MR. KAPLAN: I agree with you.

THE COURT: At the same time, I would like to hear the police officer.

MR. JOSEPH: If the Legal Aid makes the motion, it is his duty to proceed with him.

MR. KAPLAN: I don't want to call him.

MR. JOSEPH: Then I will take him.

[fol. 17] THE COURT: Gentlemen, I think the Court has something to say.

MR. JOSEPH: You see the point they are raising? Now if I put him on, he will cross-examine him.

THE COURT: Mr. Joseph, I think he ought to be called.

MR. JOSEPH: I think he ought to be called by the Court.

THE COURT: The Court will call him.

MR. JOSEPH: And counsel will be restricted to the rules of evidence?

THE COURT: Oh, yes. He will be held to the rules of evidence. Call the police officer.

ANTHONY MARTIN, called as a witness on behalf of the Court, having first been duly sworn by the Court, was examined and testified as follows:

THE COURT: Name, shield number and assignment.

THE WITNESS: Patrolman Anthony Martin; 23303, 90th.

DIRECT EXAMINATION

BY MR. JOSEPH:

Q Officer, on March 9th, did you see this defendant?

A Yes, I did.

Q What time of the day or night was it?

A I seen him continually from the hours of 4:00 P. M.

[fol. 18] to 12:00, midnight.

Q Where did you see him?

A In the vicinity of 742 Broadway.

Q How many hours did you say you saw him?

A Approximately eight hours.

Q What did this defendant do during that period of eight hours?

A He was in conversation with different known addicts.

MR. KAPLAN: Object. May I object to that, Your Honor.

THE COURT: What was that question? Mr. Joseph, there is a question being objected to.

MR. JOSEPH: The answer is already in, too.

THE COURT: Well, you shouldn't make an objection after the answer is in.

MR. KAPLAN: I only objected because the question was answered.

THE COURT: All right. What's the question?

THE OFFICIAL COURT REPORTER: (reading),

"Q What did this defendant do during that period of eight hours?

A He was in conversation with different known addicts."

THE COURT: Objection is overruled. The question and answer will stand.

Q Did you know these addicts?

[fol. 19] A Yes, I did.

Q Would you say how many addicts he spoke to?

MR. KAPLAN: Objection to reference to addicts.

MR. JOSEPH: He knows them, he says.

MR. KAPLAN: Well, how can we know these addicts?

THE COURT: We will call this a voir dire. Did you know the men with whom he spoke?

THE WITNESS: Yes.

THE COURT: Did you know them for some period of time?

THE WITNESS: Yes, I did.

THE COURT: Do you know if they are addicted to the use of narcotics?

THE WITNESS: Yes, I do.

THE COURT: How do you know that?

THE WITNESS: By their own admissions.

THE COURT: In conversations you have had with them, they have so stated to you?

THE WITNESS: Yes.

THE COURT: This is over a period of weeks or months or years?

THE WITNESS: I would say three months.
MR. KAPLAN: Everyone of them?
THE WITNESS: Everyone he had talked to.
MR. KAPLAN: Everyone he talked to, you knew [fol. 20] personally was an addict by way of an admission on the part of each one of them?
THE WITNESS: Yes.
MR. KAPLAN: How many did he talk to?
THE WITNESS: Six to eight.
MR. KAPLAN: You knew their names?
THE WITNESS: No, sir.
MR. KAPLAN: You just had gone up to them previously and asked them whether they were addicted; they said, "Yes"?
THE WITNESS: They talked to me before; I got their names but I forgot them.
MR. KAPLAN: Did you write them down?
THE WITNESS: At that time, yes.
MR. KAPLAN: Did you ever arrest any of these people?
MR. JOSEPH: Objection.
THE COURT: Objection sustained.
MR. KAPLAN: This is on the same issue.
THE COURT: We are only concerned with whether or not he knew them to be addicts. The police officer has no ground upon which to arrest an addict because he is an addict. Go ahead.
Q Officer, did there come a time when this defendant went to a restaurant?
[fol. 21] A Yes.
Q And did you follow him in the restaurant afterward?
A Yes, I did.
Q When you approached this restaurant, what did this defendant do?
A He was talking to three others.
Q Other addicts?
A Right.
Q On the inside?
A Yes.
Q In addition to the others he had spoken to?

A Yes.
Q As you approached him, what did you do?
A I asked him to come outside.
Q What did he do?
A He stepped out. I said, "You know what I am after." He had reached into his pocket and he held something into his hand. At the same time, I went into his pocket.

THE COURT: Officer, at the time you approached him, he was in the restaurant?

THE WITNESS: Yes, sir.

THE COURT: Did he then have something in his hand?

THE WITNESS: No, sir.

[fol. 22] THE COURT: As you approached him?

THE WITNESS: No, sir.

THE COURT: When did you first observe him to have something in his hand?

THE WITNESS: When I was questioning him.

THE COURT: You mean outside the restaurant?

THE WITNESS: Outside the restaurant, yes, sir.

THE COURT: And during the period in which you walked with him from the restaurant proper outside of the restaurant, did you see anything in his hand?

THE WITNESS: No, sir.

THE COURT: It was only while you were talking with him?

THE WITNESS: Yes, sir.

THE COURT: That you observed him do something?

THE WITNESS: Yes.

THE COURT: What did you see him do?

THE WITNESS: He had reached into his pocket.

THE COURT: Now you are indicating the use of the right hand?

THE WITNESS: It was the left hand, Your Honor.

THE COURT: The left hand. And you reached into what pocket with the left hand?

THE WITNESS: His left jacket pocket.

THE COURT: What did he do?

[fol. 23] THE WITNESS: At the same time I told him to take his hand out of his pocket, at the same time

I reached in with him and inside his pocket I saw in his hand and in his pocket he was ready to grab this cellophane—actually, it was a metal tin foil wrapper.

Q Did you see what it was in his hand at that time?

A I asked him what it was.

Q What did he do with it?

A I grabbed it off him.

Q Did he attempt to throw it away?

A Yes, sir. He was reaching in his pocket to throw it out.

Q Did it fall to the ground at any time?

A No, sir.

Q What did you find?

A Ten glassine envelopes.

Q Have you got them with you?

A Yes, sir.

Q Did you have them analyzed by the chemist?

A Yes, I did.

Q Do you have an analysis?

A Yes.

THE COURT: We are not concerned with that either, Mr. District Attorney. The only issue on this hearing is as to the circumstances under which the so-called [fol. 24] evidence was seized, as to whether or not there was probable cause or reasonable cause upon which the conduct or the action of the officer was predicated.

MR. JOSEPH: All right. Your witness.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q When he reached into his pocket, you didn't think he was reaching for a weapon?

A I thought he might have been.

Q But he came up with a piece of tin foil; didn't he?

A Yes.

Q And that's when you grabbed his hand?

A Well, he had his hand in his pocket. I put my hand in his pocket. At that time I caught him with his hand in his pocket.

Q Just prior to that, you asked if he had something to give you?

A I said, "You know what I am looking for." He mumbled something and reached into his pocket.

Q You were in full uniform?

A Yes, sir.

Q Did you arrest anybody else that day?

A Not that day, no.

MR. KAPLAN: No further questions.

MR. JOSEPH: That's all. That's the people's [fol. 25] case. Rather, that is his motion to controvert.

REDIRECT EXAMINATION

BY THE COURT:

Q Officer, I want to satisfy myself as to something. You were in uniform at the time?

A Yes, sir.

Q And he knew, of course, you were a police officer?

A Yes, sir.

Q You said to him, "You know what I am looking for"?

A Yes.

Q Would you say at that time that he reached into his pocket and handed the packets to you? Is that what he did or did he drop the packets?

A He did not drop them. I do not know what his intentions were. He pushed his hand into his pocket.

MR. JOSEPH: You intercepted it; didn't you, Officer?

THE WITNESS: Yes.

Q You saw him in conversation with six or eight known narcotic addicts; is that correct?

A Yes.

Q You don't know what they were talking about?

A No, sir.

THE COURT: All right.

MR. JOSEPH: I have no further questions.

[fol. 26] MR. KAPLAN: No further questions.

THE COURT: Mr. Joseph, I don't see how I can do anything but grant the motion.

MR. JOSEPH: The officer says he spoke to eight or nine addicts.

THE COURT: I am concerned with this thought, if you can disabuse my mind as to this. Here is an approach made by a police officer in full uniform. Now one who complies with the request by a police officer, pursuant to a show of authority by a police officer in full uniform, do you consider that to be a voluntary compliance? In other words, if the police officer were not in uniform and he made certain observations, as a result of which he approached the defendant, then after a series of events, no matter what they were, the defendant attempted to discard this property and the police officer retrieved it, you would have a case or you might have a case. However, here is a police officer, known by the defendant to be a police officer. The police officer advances toward the defendant and says, "You know what I am looking for." The defendant—may it not be so—was overcome or overawed by a show of authority of a police officer who asks him point-blank or says to him point-blank, "I am looking for contraband." The defendant reaches into his pocket and is [fol. 27] about to take it out, the facts there are just as consistent with the interpretation he is about to take it out and hand it to the police officer, the police officer intercepted him.

MR. JOSEPH: It doesn't make any difference whether he were going to throw it away or had possession of it. And the officer had a right to believe that he had a right to search him.

THE COURT: Mr. District Attorney, there is no testimony in this record that the police officer heard any conversation between the defendant and any of the unknown men. All he knows about the unknown men: They are narcotics addicts. They might have been talking about the World Series. They might have been talking about prize fights.

MR. JOSEPH: The defendant admitted that he talked about narcotics. The officer had probable cause. Yes, he knew he talked to eight addicts.

THE COURT: The District Attorney now reminds me. I do recall the testimony of the defendant and your witness on the witness stand. He did say—and this is what now causes me to change my mind—

MR. KAPLAN: (int'g), Over my objection.

THE COURT: Over your objection. I think a Court shows itself to be fair, when it says one position [fol. 28] is tenable and then untenable; and when a Court changes its mind, unless there is just cause, it holds itself open to criticism. In the last few statements, there was a compliance by the defendant with a show of authority, this police officer being infulluniform. But now—and I say this again in a spirit of fairness and frankness—the District Attorney reminds me of something that I overlooked. The defendant did say from the witness stand in his sworn testimony that they were talking about narcotics.

MR. KAPLAN: Yes, but he testified he didn't hear this, the question involved here, as Your Honor so ably stated. On the question of probable cause—may I finish, Mr. Joseph, please?

MR. JOSEPH: Go ahead, finish.

MR. KAPLAN: On the officer's observations, not on what he thought was happening, not on what was actually happening but was probably happening in the officer's mind, we are not interested in fact here, we are not interested in the question here whether the defendant was, in fact, planning a burglary, talking about narcotics—

DENIAL OF MOTION TO SUPPRESS

THE COURT: (int'g), Mr. Kaplan, I am denying your motion.

MR. KAPLAN: Your Honor, I most respectfully [fol. 29] except.

THE COURT: I am sorry. I am denying your motion.

MR. KAPLAN: On what ground?

MR. JOSEPH: I object to his questioning the Court.

THE COURT: I don't mind questioning the Court. I won't conceal my opinion or camouflage it. It is my

opinion—this is what I am stating in my action—the police officer's action was predicated on probable cause. Motion is denied.

MR. KAPLAN: Without anything further?

THE COURT: Without anything further, Mr. Kaplan. What date?

OFFICER MARTIN: April 23rd.

MR. KAPLAN: Three-man bench?

THE COURT: Part 2B. April 23rd.

The above is a correct transcript of the minutes taken in this case.

/s/ Abraham Goetz, CSR
Official Court Reporter

[fol. 30] IN THE CRIMINAL COURT
OF THE CITY OF NEW YORK
PART 1C, BOROUGH OF BROOKLYN

Docket No. A-2299

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF

-vs.-

NELSON SIBRON, DEFENDANT

PRESENT:

HON. MICHAEL KERN, Judge

OPINION AND ORDER—March 31, 1965

The defendant having moved for an order of this Court, suppressing the evidence seized pursuant to such search warrant, and said motion having duly come on to be heard before this Court on the 31st day of March, 1965, and testimony having been heard by the Court, and due deliberation having been had herein, it is

ORDERED that said motion be and the same is hereby Denied and the Court hereby makes the following findings on the said motion. The Court is satisfied that there was probable cause for the action taken by the police officer.

/s/ Michael Kern
Judge

[fol. 31] IN THE CRIMINAL COURT
OF THE CITY OF NEW YORK
PART 2B, BOROUGH OF BROOKLYN

Docket No. A 2299

Charge: Sec. 3305, P. H. L.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF

-against-

NELSON SIBRON, DEFENDANT

MINUTES OF APRIL 23, 1965 ON PLEA AND SENTENCING

Brooklyn, N. Y.

BEFORE:

HON. JOHN J. RYAN, Criminal Court Judge,
Presiding

and

HON. PAULINE J. MALTER, HON. JACK ROSENBERG,
Associate Criminal Court Judges

APPEARANCES:

ALBERT SCLAFANI, ESQ.
Assistant District Attorney
For the People

JOSEPH KAPLAN, ESQ.
%Legal Aid Society
360 Adams Street
Brooklyn, New York
For the Defendant

COURT OFFICER: O. CHURCH

ABRAHAM GOETZ, CSR
Official Court Reporter

[fol. 32] THE COURT OFFICER: No. 10. Nelson Sibron. Jail case. Would you bring him up, Officer? This is a jail case. The officer is here.

JUDGE RYAN: Second call.

(Case set aside, later recalled.)

THE COURT OFFICER: No. 10. Nelson Sibron.

MR. KAPLAN: This is for disposition, Your Honor. It is contemplated by the defense here to plead this defendant guilty, if, in fact, Your Honors would rule on one point of law, if you will. This defendant lost a motion to suppress prior to today. Judge Kern held in Part 1C that there was probable cause and, therefore, the heroin in this particular case was not suppressed. If Your Honor would allow a retrial on the motion, a motion at the trial, it is on the voir dire, if I could reopen—

MR. SCLAFANI: (int'g), What Mr. Kaplan wants is two bites of the apple.

MR. KAPLAN: That's what I am asking.

JUDGE RYAN: Counsel, after the motion to suppress was denied, the Court's decision would be binding on this Court.

MR. KAPLAN: In that case, the defendant would [fol. 33] plead guilty to the 3305 to cover the entire information.

JUDGE RYAN: Would you arraign the defendant?

MR. SCLAFANI: Would Your Honor please warn this defendant of the provisions of the Code?

JUDGE RYAN: I must advise the defendant that a plea of guilty is equivalent to conviction after trial and that if he is found guilty either as a result of the plea or after trial and it develops after the acceptance of the plea that he has been previously found guilty of a violation of the Narcotics Law of the State of New York, not only will he be subject to a penalty but, in addition thereto, he will be subject to a mandatory jail sentence of six months.

MR. SCLAFANI: Are you Nelson Sibron?

MR. SIBRON: Yes.

MR. SCLAFANI: The District Attorney charges March 9, 1965, 11:50 P. M., in front of 742 Broadway, County of Kings, you did violate Section 3305 of the Public Health Law. You had in your possession a quantity of heroin. How do you plead?

MR. SIBRON: Guilty.

MR. SCLAFANI: Defendant pleads guilty.

MR. KAPLAN: Let the record indicate the defendant has examined the report from the Laboratory.

JUDGE RYAN: Now this plea made by the defendant [fol. 34] is made voluntarily, without threats or promises by the Court or the District Attorney?

MR. SIBRON: Voluntarily.

JUDGE RYAN: Date, counsel?

MR. KAPLAN: We will waive forty-eight hours.

THE COURT OFFICER: He is a multiple offender.

JUDGE RYAN: Mr. D. A., would you warn him?

MR. SCLAFANI: Now listen, Mr. Sibron. You are now being warned under Section 3305 of the Code of Criminal Procedure. You are charged, in your plea of guilty to the crime of 3305 of the Public Health Law, possession of narcotic drugs in violation of the Narcotic Drugs Law and pursuant to Section 1751 of the Penal Law, it is charged that on November 21, 1964, in the Criminal Court—no, on June 11, 1964, in the Criminal Court, before Judge Cullen, you received a sentence of six months for violation of the Narcotics Law, 3305 of the Public Health Law, and we now charge you with being a multiple narcotics offender. Now you may admit that you are that same Nelson Sibron, you may stand mute or deny that you are the person mentioned as the multiple narcotics offender, If you admit, a minimum mandatory sentence is six months in the New York City Penitentiary; [fol. 35] the maximum is an indefinite term. If you deny or stand mute, you may have a hearing before one or three judges of this Court to determine if you are the person mentioned in the multiple offender information; and if found to be the same person, the minimum mandatory or maximum mandatory sentence is six months or indefinite. Do you admit, stand mute or deny you are the same Nelson Sibron?

MR. SIBRON: I am the same.

MR. SCLAFANI: The defendant admits he is the same Nelson Sibron.

JUDGE RYAN: Would you approach the bench with the D. A.?

(Discussion off the record.)

JUDGE RYAN: What is your name?

MR. SIBRON: Nelson Sibron.

JUDGE RYAN: Is the defendant ready for sentence at this time?

MR. KAPLAN: Yes, Your Honor.

JUDGE RYAN: Any reason why sentence of this Court should not now be pronounced?

MR. KAPLAN: No, Your Honor.

JUDGE RYAN: Does the defendant waive the forty-eight hours allowed?

MR. KAPLAN: Yes, Your Honor.

[fol. 86] JUDGE RYAN: Do you wish to make a statement or do you wish your lawyer to make a statement on your behalf, counsel?

MR. KAPLAN: Your Honor, this defendant is a drug addict, self-admitted drug addict. He was apprehended in the store by the officer. The officer walked over and took the narcotics out of his hand. He came quietly to the station, didn't give the officer any trouble. He has been arrested many, many times before and spent many, many days in jail. This doesn't cure him. I don't think anything will cure him, except new legislation by the Legislature. I ask the minimum mandatory sentence in this case.

JUDGE RYAN: Sentence of the Court is six months in the workhouse.

MR. KAPLAN: Thank you.

The above is a correct transcript of the minutes taken in this case.

/s/ Abraham Goetz, CSR
Official Court Reporter

[fol. 37] IN THE APPELLATE TERM
OF THE SUPREME COURT,
SECOND JUDICIAL DEPARTMENT
AT THE BOROUGH OF BROOKLYN

Cal.No.258—Sept.1965.

PRESENT—HON. ANTHONY J. DIGIOVANNA
" " JAMES S. BROWN
" " CHARLES MARGETT
Justices

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

vs.

NELSON SIBRON, APPELLANT

ORDER—October 15, 1965

The above named Nelson Sibron, the defendant herein, having appealed to the Appellate Term, Supreme Court from a judgment of conviction of the Criminal Court of the City of New York, County of Kings, rendered on the 23rd. day of April, 1965, after a trial convicting him of a violation of

Section 3305 of the Public Health Law,

and imposing sentence as follows:

Six Months in New York City Penitentiary,

and the said appeal having been submitted by Mr. Kalamn Finkel, of counsel for the appellant, and submitted by Mr. Michael Schwartz, of counsel for the respondent, and due deliberation having been had thereon;

It is hereby ordered and adjudged that the judgment of conviction so appealed from be, and the same is hereby, affirmed.

/s/ J. S. B.
J. S. C.

[fol. 38] No. 115

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND, Chief Judge, Presiding

RAYMOND J. CANNON, Clerk

REMITTITUR—July 7, 1966

[fol. 39] App. T. No. 115. 66

THE PEOPLE &C., RESPONDENT

vs.

NELSON SIBRON, APPELLANT

Be it Remembered, That on the 7th day of March in the year of our Lord one thousand nine hundred and sixty-six, Nelson Sibron, the appellant—in this cause, came here unto the Court of Appeals, by Anthony F. Marra and Kalman Finkel, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Term of the Supreme Court, Second Judicial Department. And The People &c., the respondent—in said cause, afterwards appeared in said Court of Appeals by Aaron E. Koota, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 40] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Kalman Finkel, of counsel for the appellant—, and by Mr. Michael Schwartz, of counsel for the respondent—, and after due deliberation

had thereon, did order and adjudge that the judgment herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Criminal Court of the City of New York, there to be proceeded upon according to law.

[fol. 41] Therefore, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Criminal Court of the City of New York, before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Criminal Court, before the Judges thereof, &c.

/s/ Raymond J. Cannon
Clerk of the Court of Appeals
of the State of New York

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 42] IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the twenty-second day of September A. D. 1966.

PRESENT,

HON. CHARLES S. DESMOND, Chief Judge, presiding

2 Mo. No. 886

THE PEOPLE &C., RESPONDENT

vs.

NELSON SIBRON, APPELLANT

ORDER AMENDING REMITTITUR—September 22, 1966

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Whether the rights of the defendant-appellant under the Fourth and Fourteenth Amendments were violated. The defendant argued that Section 180-a of the New York Code of Criminal Procedure is unconstitutional in that it authorizes an unreasonable search and seizure. The Court of Appeals considered this contention and held that the statute does not authorize an unreasonable search and seizure and that, in this case, there was no denial of the defendant-appellant's constitutional rights.

AND the Criminal Court of the City of New York hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

* * * *

[fol. 43] IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

NELSON SIBRON, APPELLANT

OPINION—Decided July 7, 1966

* * * *

[fol. 44] Judgment affirmed.

Concur: Chief Judge DESMOND and Judges BURKE, SCILEPPI, BERGAN and KEATING. Judge VAN VOORHIS dissents and votes to reverse in the following opinion; Judge FULD dissents and votes to reverse for the reasons stated in his dissenting opinion in *People* v. *Peters* (18 N Y 2d 238, 248), decided herewith.

VAN VOORHIS, J. (dissenting). There was no probable cause to make an arrest prior to the discovery of this package of heroin when the officer put his hand into the suspect's pocket allegedly frisking him for a dangerous weapon, nor do the People contend on this appeal that there was probable cause to make an arrest. The testimony of the officer on the pretrial hearing of the motion to suppress suggests that he was looking for violation of the narcotics law, inasmuch as he testified that he saw appellant talking with known drug addicts, and stated to him "You know what I am looking for." This may be enough to bring the appellant within subdivision 1 of section 180-a of the Code of Criminal Procedure which provides that "A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony". On the basis of the heroin which the officer removed from his pocket, he was at first charged with violation of section 1751 of the Penal Law which is a felony, but this was reduced to the misdemeanor charge of violating section 3305 of the Public Health Law. Giving a liberal construction to the power of a police officer to stop and frisk,

under said section added by chapter 86 of the Laws of 1964, it may be assumed that the police officer reasonably suspected that this man was committing or was about to [fol. 45] commit a felony within the meaning of this statute, so that he was entitled to stop and frisk him. Until the discovery of the heroin in his pocket, the officer had, however, no probable cause on which to arrest him.

Denial of the motion to suppress the heroin which the officer took from his pocket depends, in order to be sustained, upon the theory that the officer had the right to frisk him under the first sentence of subdivision 2 of section 180-a, and that having found him in possession of the heroin instead of a knife or revolver the narcotic was properly seized and constituted a predicate for his ensuing arrest. This would be authorized by the last sentence of subdivision 2 of section 180-a, if it is constitutional, which reads: "If the police officer finds such a weapon *or any other thing the possession of which may constitute a crime*, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, *or arrest such person.*" (Italics supplied.)

That sentence goes beyond anything decided in *People* v. *Rivera* (14 N Y 2d 441) or *People* v. *Pugach* (15 N Y 2d 65). The power to frisk is practically unlimited, inasmuch as whether an officer "reasonably suspects" that someone is committing, has committed or is about to commit a felony necessarily depends to a large extent upon the subjective operations of the mind of the officer. "The police may not arrest on mere suspicion" (*Mallory* v. *United States*, 354 U. S. 449, 454), although they may frisk on suspicion. The very abuses to which this important power is subject furnishes a strong reason for confining its exercise to the single purpose for which the frisk is countenanced—the discovery of dangerous weapons concealed upon the person of the suspect to protect the safety of the officer. To realize the awareness of the United Etates Supreme Court to the danger of dragnet procedures and general search after the manner of writs of assistance in colonial times one need only read the opinions in *Boyd* v. *United States* (116 U. S. 616) or *Marron*

v. *United States* (275 U. S. 192). Those who have opposed the constitutionality or fundamental fairness of stop and frisk have done so on the basis that it will result in general search and seizure upon the person of the suspect. Judge FULD'S dissent in *People* v. *Rivera* (*supra*, p. 448) will have been proved to be correct if the right to "stop and frisk" can be utilized as a ground for making a general search of the person. His dissent in *Rivera* begins with this statement: "I very much fear that, if this decision stands, a method will have been devised by which the Fourth Amendment's prohibition against unreasonable searches may be evaded and the exclusionary rule of *Mapp* v. *Ohio* (367 U. S. 643), to a large extent, written off the books."

[fol. 46] *If a frisk reveals a weapon, which is the only purpose for which it is authorized, then it should be confiscated and be evidence against the accused on a charge of unlawfully possessing or concealing a weapon or in any other criminal context in which the possession of a weapon is a factor.* If we go beyond that, then frisking a suspect, which can be done in practice (though not in theory) at the officer's whim, will become a pretext for the general search of the person, without probable cause, which the Fourteenth Amendment was designed to prevent. The power to frisk is an exception to the probable cause rule in search and seizure, and is not a search at all except for the discovery of a dangerous weapon concealed upon the person. There it should end, for all purposes. The protection thereby afforded to a policeman, and to bystanders if a shooting duel ensues, is so manifestly called for as a matter of common sense that the benefits to be derived should not be foregone by bending this wholesome device to a different and unintended purpose and by so doing subtly to subvert an important part of the Fourth Amendment.

In *Stanford* v. *Texas* (379 U. S. 476, 485) the Supreme Court said: " 'The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of

the officer executing the warrant.' *Marron* v. *United States*, 275 U. S. 192, at 196."

This language referring to describing particularly the things to be seized under a warrant, which is taken directly from the Fourth Amendment, lends strength by analogy to a rule that the products of a frisk should be limited to the purpose of the frisk which is to discover and seize dangerous weapons from the person of a suspect, and no more.

If the heroin seized from appellant can be used against him in this manner, what may happen in other instances can readily be perceived from *People* v. *Pugach* (15 N Y 2d 65, *supra*). There the defendant sat between two police officers in the rear seat of an automobile with a brief case upon his lap. They frisked him without discovering a weapon and then opened the brief case which contained a revolver. We held that the brief case was an extension of his person so that it was included within the frisk rule of *Rivera*. It is apparent that, if the police can go where they will opening brief cases and inspecting them for whatever they may contain, which, if contraband, may then be used against the possessor although the safety of the officer or public from violence is not remotely involved, we shall have progressed a considerable distance toward the police state.

Within limits it is true that a search may be made of the person as incident to an arrest without a warrant based on probable cause (*Harris* v. *United States*, 331 [fol. 47] U. S. 145), and where a warrant has been issued the officers conducting the search are not limited precisely to the articles of property enumerated therein, particularly if they are instrumentalities of crime (*Johnson* v. *United States*, 293 F. 2d 539, cert. den. 375 U. S. 888), although these rules are subject to limitation (*Preston* v. *United States*, 376 U. S. 364). But here there was neither search warrant nor arrest, nor probable cause for either. The frisk, whether authorized by statute or judicial decision, is an exception to the search and seizure rules which are all based on probable cause. In the interest of public policy, as it has existed since *Mapp* v. *Ohio* (367 U. S. 643), it seems to me that this exception should be strictly

circumscribed, that it is subject to limitations inherent in its own creation and that, unless the structure of protection against general search of the person is to be broken down, these limitations must be adhered to regardless of whether they conform precisely to legal logic. The frisk has its obvious justification as an exception to the probable cause rule and, it seems to me, also its obvious restrictions. It should not be allowed to become a dragnet or be used for purposes for which it is not intended.

Here, without probable cause, the frisk discovered the heroin, then the heroin served as a basis for arrest which, in turn, was claimed to justify the search which disclosed it. This violates the rule that a search cannot be supported by what it discloses. Neither can it be said, with any sense of reality, that since the officer could frisk almost at will, anything which he discovers can be utilized, however remote it may be from dangerous weapons, with the same effect as though the search had been incidental to a valid arrest or upon a warrant based on probable cause.

The judgment appealed from should be reversed and appellant's motion to suppress granted under section 813-c of the Code of Criminal Procedure.

Judgment affirmed.

[fol. 48]

[Triple Certificate to foregoing paper omitted in printing]

[fol. 49] IN THE CRIMINAL COURT
OF THE CITY OF NEW YORK
COUNTY OF KINGS

Calendar No. ———
In the C.A. 315
Docket No. A2299

NELSON SIBRON, APPELLANT

v.

THE PEOPLE OF THE STATE OF NEW YORK, APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Dated September 2, 1966

1. Notice is hereby given that Nelson Sibron, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the New York Court of Appeals entered on July 7, 1966, affirming the order and judgment of the Appellate Term, Second Judicial Department, entered on October 15, 1965 which affirmed the judgment of the Criminal Court of the City of New York, Kings County rendered on April 23, 1965.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Appellant was convicted of the crime of possession of narcotics in violation of Section 3305 of the Public Health Law and was sentenced to six months imprisonment. Appellant is presently incarcerated and in custody on another charge.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

(1) Information
(2) Minutes of hearing on motion to suppress evidence. (March 31, 1965)

(3) Minutes of Plea and Sentencing (April 23, 1965) [fol. 50] (4) Judgment of the Criminal Court

(5) The Order of the Appellate Term affirming the judgment.

(6) The Order of the Court of Appeals affirming the Order of the Appellate Term.

(7) Amended remittitur in the Court of Appeals.

(8) Notice of Appeal to the Supreme Court of the United States.

III. The following questions are presented by this appeal.

(1) Whether Section 180-a of the New York Code of Criminal Procedure is unconstitutional on its face as repugnant to the Fourth and Fourteenth Amendments because it authorizes a detention on a standard less than probable cause to believe that a crime has been or is being committed.

(2) Whether Section 180-a of the New York Code of Criminal Procedure is unconstitutional on its face as repugnant to the Fourth and Fourteenth Amendments because it authorizes the police to search an individual without a warrant or consent, and upon less than probable cause to believe he had committed or was committing a crime.

(3) Whether Section 180-a is unconstitutional on its face as repugnant to the Fourth and Fourteenth Amendments insofar as it authorizes the police to seize things other than weapons which the prosecution may then utilize as evidence in a criminal action.

(4) Whether, assuming that Section 180-a is not unconstitutional on its face, is it unconstitutional because of repugnancy to the Fourth and Fourteenth Amendments by virtue of its being held applicable to this case.

(5) Whether appellant has been convicted in violation of his rights under the Fourth and Fourteenth Amendments, in that there was not probable cause

to arrest him and make an incidental search of his person.

[fol. 51]

/s/ Kalman Finkel
Attorney for Nelson Sibron,
Appellant
100 Centre Street
New York, New York 10013

Dated: New York, New York
September 2, 1966

[fol. 52]

[Proof of Service Omitted in printing]

[fol. 53]

SUPREME COURT OF THE UNITED STATES

No. 821 Misc., October Term, 1966

NELSON SIBRON, APPELLANT

v.

NEW YORK

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—March 13, 1967

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

[fol. 54]

SUPREME COURT OF THE UNITED STATES

No. 821 Misc., October Term, 1966

NELSON SIBRON, APPELLANT

v.

NEW YORK

Appeal from the Court of Appeals of the State of New York.

ORDER NOTING PROBABLE JURISDICTION—March 13, 1967

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 1139.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 267690 1007